

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TOM M. FRANKS

Plaintiff,

v.

JOHNSON, et al.,

Defendants.

No. 1:20-cv-00551-DAD-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION

(Doc. No. 14)

Plaintiff Tom M. Franks is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 28, 2020, the assigned magistrate judge screened plaintiff's first amended complaint and issued findings and recommendations, recommending that this action be dismissed due to plaintiff's failure to state a cognizable claim upon which relief may be granted. (Doc. No. 14.) Those findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days from the date of service. (*Id.*) Following the granting of an extension of time to do so, plaintiff filed objections on October 29, 2020. (Doc. No. 15.)

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1 In his objections, plaintiff argues in part that he filed this action pursuant to 42 U.S.C.
2 § 1983, rather than as a *habeas* action, because he received permission to do so from the court in
3 Case No. 1:20-cv-00136-NONE-EPG-HC. (Doc. No. 17 at 6.) Plaintiff made this argument in
4 response to the statement appearing in the pending findings and recommendations that “[t]o the
5 extent Plaintiff is attempting to challenge the legality of his custody, he may not do so in a
6 Section 1983 proceeding.” (Doc. No. 14 at 6.) However, while plaintiff may have received
7 guidance from the court as to the appropriate vehicle by which to file this action, plaintiff must
8 still allege facts stating a cognizable claim for relief, and he has failed to do so here.¹

9 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this court has conducted a
10 *de novo* review of the case. Having carefully reviewed the entire file, the court finds the findings
11 and recommendations to be supported by the record and by proper analysis.

12 Accordingly,

- 13 1. The findings and recommendations issued on September 28, 2020 (Doc. No. 14) are
14 adopted in full;
- 15 2. This action is dismissed due to plaintiff’s failure to state a claim; and
- 16 3. The Clerk of the Court is directed to close this case.

17 IT IS SO ORDERED.

18 Dated: **December 1, 2020**

19 
UNITED STATES DISTRICT JUDGE

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27 ¹ The court further notes that plaintiff has apparently raised the exact same claims in several other
28 actions he has brought. *See, e.g., Franks v. Johnson*, Case No. 1:20-cv-00367-AWI-SAB (E.D. Cal.) (dismissed for failure to state a claim on May 1, 2020); *Franks v. Johnson*, Case No. 2:20-cv-04635-VBF-PD (C.D. Cal.) (pending).